IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

POCOPSON INDUSTRIES, INC., et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
HUDSON UNITED BANK	:	NO. 05-6173

O'NEILL, J. JULY 26, 2006

MEMORANDUM

This case arises out of corporate plaintiff's default of loan obligations secured by commercial and residential property owned by individual plaintiff guarantors of those secured loans. Plaintiffs are a number of related entities and individuals. Pocopson Industries, Inc. is wholly owned by plaintiff B.L. Marra & Son, Inc. ("BLM"), which in turn is wholly owned and run by plaintiffs Bruce L. Marra and his son Edward Marra. Plaintiffs Janet and Paige Marra are the wives of Bruce and Edward, respectively. Pocopson and BLM are Pennsylvania corporations with their principal places of business in Pennsylvania. Individual plaintiffs are all citizens of Pennsylvania. Defendant, Hudson United Bank, is a New Jersey corporation with its principal place of business in New Jersey.

Plaintiffs filed a complaint on November 28, 2005 alleging that defendant violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq. ("ECOA"), by requiring that Janet and Paige Marra serve as personal guarantors of Pocopson's loan modification agreement, which refinanced Pocopson's secured debt obligations to defendant following Pocopson's first default. Defendant filed a counterclaim on December 21, 2005 alleging that plaintiffs collectively are in default of Pocopson's loan obligations. On January 27, 2006, I granted defendant's motion to

dismiss plaintiffs' claim because it was barred by the statute of limitations. Before me now are defendant's (counterclaim plaintiff's) two motions for partial summary judgment with respect to its breach of contract claim and the parties' associated briefs. Counterclaim plaintiff's first motion is against all counterclaim defendants. Its second, alternative, motion is against all counterclaim defendants but Janet and Paige Marra.

BACKGROUND

On July 31, 2002, HUB extended a commercial line of credit in the original principal amount of $180,000 to Pocopson, with a maturity date of August 1, 2003. This line of credit was secured by a second mortgage and assignment of leases and rents encumbering Pocopson's commercial property and a second mortgage encumbering the home of Edward and Paige Marra. Although the preceding negotiations only involved Bruce and Edward Marra, HUB required that this line of credit be guaranteed by BLM and Bruce, Janet, Edward, and Paige Marra.

On October 4, 2002, HUB extended a second commercial line of credit in the original principal amount of $500,000 to Pocopson, with a maturity date of October 1, 2003. This line of credit was secured by a first lien encumbering Pocopson's equipment and business assets as well as a fourth mortgage and assignment of leases and rents with regard to Pocopson's commercial property. As with the first line of credit, HUB required that this second line of credit be guaranteed by BLM and Bruce, Janet, Edward, and Paige Marra notwithstanding the absence of the wives in the negotiations.

Also on October 4, 2002, HUB extended a commercial mortgage loan in the amount of $1,263,600 to Pocopson, with a maturity date of October 4, 2012. This loan was secured by a third mortgage and assignment of leases and rents with regard to Pocopson's commercial

property and a second lien encumbering Pocopson's equipment and business assets. As with the first two lines of credit, Janet and Paige Marra were required to execute personal guarantees of the loans despite their lack of involvement in the negotiations of those loans. However, unlike the first two lines of credit, this commercial mortgage loan was guaranteed by the Small Business Administration as well as BLM and Bruce, Janet, Edward, and Paige Marra.

The first two loans provided that failure to repay the loans on or before the maturity dates constituted default. The terms of the third loan provided that a default of any loan with HUB constituted a default on the third loan as well. Pocopson failed to repay the first loan by August 1, 2003 and the second loan by October 1, 2003. Thus, by October 2003, Pocopson was in default on all three loans. The guarantors of these three loans failed to cure Pocopson's defaults. Therefore, in October 2003, they also were in default of their loan obligations.

At that point, the parties entered into negotiations to refinance Pocopson's and the guarantors' loan obligations. During these negotiations, HUB communicated only with Edward and Bruce Marra, President and Vice President of Pocopson, respectively. In reaching an agreement, HUB required that BLM and Edward and Bruce Marra serve as guarantors of the refinanced loans but did not insist upon their wives serving as personal guarantors. Nevertheless, near the conclusion of negotiations, HUB sent Pocopson a Letter of Intent dated September 30, 2003, which generally set forth the terms and conditions of the modifications to the loans and informed the Marras that Janet and Paige Marra would be required to sign the modified agreement as guarantors as well. The Letter of Intent stated, in relevant part:

> This letter of intent ("Letter of Intent") is intended to generally outline the proposed modifications to the subject commercial credit facilities (collectively, "Loans") which are being requested by the following obligors (collectively, "Obligors"): Pocopson,

> Industries, Inc. ("Borrower"), as borrower, and B.L. Marra & Son, Inc., Bruce L. Marra, Edward B. Marra, Janet M. Marra and Paige H. Marra (collectively, "Guarantors"), as guarantors.

All plaintiffs signed the Letter of Intent as obligors. Pocopson's then president signed on its behalf as borrower and the signature was attested by Paige Marra as corporate secretary. Bruce Marra signed on behalf of BLM as a guarantor and that signature was attested by Edward Marra as vice president. Bruce, Janet, Edward, and Paige Marra all signed individually as guarantors and their signatures were witnessed by their attorney.

The Letter of Intent included a "Reaffirmation of Loan Documents" provision that stated, in relevant part:

> As of the date of the loan modification agreement, the Obligors shall reaffirm their respective obligations under the loan documents executed in connection with the Loans and shall acknowledge and agree that, to the extent that the loan documents are not modified by the loan modification agreement contemplated hereby, that all other terms, conditions, collateral and guarantees of the existing loan shall remain unchanged and in effect...

The Letter of Intent also included a "General Release" provision that stated, in relevant part:

> Effective as the date of this Letter of Intent, the Obligors agree and hereby grant the Lender with a general release of any and all claims which the Obligors may have against the Lender (excluding the Lender's obligations under this Letter of Intent and pursuant to the contemplated loan modification agreement), including but not limited to such claims relating to and/or arising in connection with the Loans. Although the contemplated loan modification agreement shall include a provision that provides for such a general release by the Obligors to the Lender, the Obligors agree and acknowledge that such general release is effective upon their respective execution of this Letter of Intent and shall be reaffirmed as of the date . . . the loan modification agreement is executed.

Lastly, the Letter of Intent included an "Acknowledgment of Obligations" provision that stated, in relevant part:

> As of the date of this Letter of Intent, the Obligors acknowledge that are [sic] justly indebted to the Lender for the full amount of their respective obligations due in

> connection with the Loans (and for such further and other amounts which may be due and owing under the loan documents, including the contemplated loan modification agreement) and the obligations in connection with the Loans are not subject to any defenses, setoffs, counterclaims or affirmative claims whatsoever, in the amount set for on attached Schedule 1.

As contemplated by the Letter of Intent, Pocopson, and BLM and Bruce, Janet, Edward, and Paige Marra as guarantors, entered into the Loan Modification Agreement on November 26, 2003 (effective November 28, 2003) with HUB in which HUB agreed conditionally to waive the defaults, forbear from taking legal action, and modify the terms of the loan documents: the first loan would be repaid in full immediately; the maturity of the second loan was extended to November 30, 2010; and the maturity of the third loan remained unchanged. All plaintiffs signed the Letter of Intent. Edward Marra executed the LMA on behalf of Pocopson in his capacity as chairman and CEO and the signature was attested by Paige Marra as corporate secretary. Bruce Marra also executed the LMA on behalf of BLM as guarantor in his capacity as president and that signature was attested by Paige Marra as assistant corporate secretary. Bruce, Janet, Edward, and Paige Marra all signed individually as guarantors and their signatures were witnessed by their attorney.

Although they executed the three loan agreements and the LMA as personal guarantors, Janet and Paige Marra did not have any involvement in the LMA negotiations and they were not invited to do so. They did not communicate with or meet anyone from HUB during the negotiation process or the closing for the LMA. Pocopson qualified independently and was creditworthy for the LMA and BLM, Bruce, and Edward Marra each qualified independently and was creditworthy as guarantors for the LMA.

The LMA includes an express acknowledgment by Pocopson and the guarantors that they were in default of their obligations under the three loans and stated that except as expressly modified thereby, all the terms and conditions of the original loan documents, including the terms of all the guaranties, remained in full force and effect. Section 5.3 of the LMA reaffirms their continued obligations under the three loans and states that their obligations are not subject to any defenses, setoffs or counterclaims:

> THE OBLIGORS REAFFIRM ALL THE TERMS AND CONDITIONS OF THE LOAN DOCUMENTS AND ACKNOWLEDGE THAT, EXCEPT AS PROVIDED BY THIS AGREEMENT, THE OBLIGATIONS WILL CONTINUE TO BE DUE AND PAYABLE. THEY FURTHER REAFFIRM THAT THEY ARE JUSTLY INDEBTED TO THE LENDER FOR THE FULL AMOUNTS OF THE LOANS IN THE AMOUNTS SET FORTH IN SECTION 4 OF THIS AGREEMENT (AND FOR SUCH FURTHER AND OTHER AMOUNTS WHICH MAY BE DUE AND OWING UNDER THE LOAN DOCUMENTS) AND THE OBLIGATIONS ARE NOT SUBJECT TO ANY DEFENSES, SETOFFS, COUNTERCLAIMS OR AFFIRMATIVE CLAIMS WHATSOEVER.

In addition, Paragraph 8 of the LMA provides for the general release of HUB by the debtors and guarantors:

> THE OBLIGORS AND THEIR RESPECTIVE REPRESENTATIVES, SUCCESSORS AND ASSIGNS EACH KNOWINGLY, VOLUNTARILY AND IRREVOCABLY REMISE, RELEASE AND FOREVER DISCHARGE THE LENDER, AND ITS SHAREHOLDERS, DIRECTORS, OFFICERS, PROFESSIONALS, AGENTS, SERVANTS, EMPLOYEES AND SUCCESSORS AND ASSIGNS OF AN FROM ANY AND ALL MANNER OF CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, RIGHTS OF ACTION, MANNERS OF ACTION, SUITS, DEBTS, DUES, COVENANTS, BONDS AND OTHER LIABILITIES OF ANY NATURE OR DESCRIPTION WHATSOEVER, AT LAW OR IN EQUITY, AND INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS RELATING TO THE MAKING, VALIDITY AND ENFORCEMENT OF THE LOANS, LOAN ADMINISTRATION AND LOAN DOCUMENTS AND THIS AGREEMENT WHICH THE OBLIGORS AND THEIR REPRESENTATIVES, SUCCESSORS AND ASSIGNS EVER HAD OR NOW HAVE.

Under the terms of the LMA, payments on the second loan were due as follows: from December 1, 2003 through September 1, 2004, interest only on the first day of the each month; and from October 1, 2004 through November 1, 2010, principal and interest on the first day of each month. Interest on the second loan accrued at a variable rate calculated as the prime rate announced by HUB from time to time plus 1.5%. The schedule of payments on the third loan remained unchanged: principal and interest were due on the first working day of each month from December 4, 2002 through maturity. The interest rate remained unchanged: interest accrued at a variable rate equal to the prime rate announced from time to time in the Wall Street Journal plus 2.5%. The LMA further provided that failure to make any payment when due constituted default.

In the event of default, the LMA provides that HUB has the right to declare the outstanding balance of each loan and the accrued unpaid interest on each loan payable and due immediately. Moreover, the LMA entitles HUB to a default interest rate on each loan: the greater of (i) 15% per year; or (ii) the non-default rate on each loan, plus 5% per year. In addition, the LMA provides that upon failure to make any payment within ten days of the due date, HUB is entitled to late fees in the amount of 5% of the regularly scheduled payment. As in the three loans, the LMA provides that each guarantor is liable jointly and severally to HUB for all amounts due from Pocopson. The LMA further provides that HUB is entitled to recover all of its fees, costs, and expenses, including reasonable attorneys fees incurred to enforce HUB's rights under the agreement.

Pocopson paid off the first loan but defaulted on its obligations under the LMA by failing to make payments on the second loan that were due on October 1, 2005 and, also, by failing to

make payments on the third loan that were due on November 1, 2005. Pocopson has not made any subsequent loan payments. The guarantors failed to cure Pocopson's default and, thus, defaulted on their obligations under the LMA and the second and third loans.

HUB seeks the following damages: (a) $367,013.30 in the outstanding principal amount of the second loan; (b) $1,017,345.14 in the outstanding principal amount of the third loan; (c) accrued unpaid interest on the second loan from October 1, 2005 through the date of judgment at the default interest rate; (d) accrued unpaid interest on the third loan from November 1, 2005 through the date of judgment at the default interest rate; (e) late fees on the second loan; (f) late fees on the third loan; and (g) fees, costs, and expenses, including attorneys fees.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides, in relevant part, that summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) (2004). The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions . . . which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). After the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e) (2004).

I must determine whether any genuine issue of material fact exists. An issue is genuine if the fact finder could reasonably return a verdict in favor of the non-moving party with respect to

that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue is material only if the dispute over the facts "might affect the outcome of the suit under the governing law." Id. In making this determination, I must view the facts in the light most favorable to the non-moving party, and the non-moving party is entitled to all reasonable inferences drawn from those facts. Id. However, the nonmoving party may not rest upon the mere allegations or denials of the party's pleading. See Celotex, 477 U.S. at 324. The non-moving party must raise "more than a mere scintilla of evidence in its favor" in order to overcome a summary judgment motion and cannot survive by relying on unsupported assertions, conclusory allegations, mere suspicions. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989). If the evidence for the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. Anderson, 477 U.S. at 249-50 (citations omitted).

DISCUSSION

In its motion for partial summary judgment, HUB argues that counterclaim defendants cannot assert the ECOA and Regulation B defensively as a recoupment claim against HUB because they released and waived their right to such claims and defenses against HUB when they executed the Letter of Intent and the LMA. HUB argues that the release and waiver provisions in the Letter of Intent and the LMA clearly encompass all of the ECOA-based claims and defenses that relate to the loans at issue and the loan documents executed in connection with those loans. No dispute exists regarding the facts that are material to whether counterclaim defendants can assert an ECOA recoupment defense against HUB. Therefore, for the purposes of this motion, the only dispute between the parties is whether as a matter of law the release and waiver provisions of the Letter of Intent and the LMA bar counterclaim defendants from asserting their

time-barred claims as to HUB's alleged violation of the ECOA defensively by way of recoupment. For the reasons that follow, I agree with HUB that counterclaim defendants' ECOA defense is barred and I will grant HUB's motion for partial summary judgment. I need not address HUB's second motion for partial summary judgment.

I. Equal Credit Opportunity Act

In their complaint, counterclaim defendants asserted that, by requiring Janet and Paige Marra to execute the LMA as guarantors, HUB violated provisions of the ECOA and Regulation B that prohibit discrimination on the basis of marital status. The ECOA, codified at 15 U.S.C. §1691 *et seq*., is a component of the Consumer Credit Protection Act, 15 U.S.C. §1601 *et seq*. ("CCPA"). The CCPA is a "comprehensive statute designed to protect consumers by requiring full disclosure of financial terms in most credit transactions, making unlawful the use of certain unethical practices in the garnishment of wages and debt collection . . . and prohibiting discrimination in credit transactions." Brothers v. First Leasing, 724 F.2d 789, 791 (9th. Cir 1984).

The ECOA is the portion of the CCPA intended to prohibit discrimination in the extension of credit by making it unlawful for any creditor to discriminate on the basis of race, color, religion, national origin, sex or marital status in connection with any credit transaction. 15 U.S.C. §1691(a). Pursuant to the ECOA's implementing regulation, Federal Reserve Board Regulation B, the extension of credit may not be conditioned upon a spousal guaranty: "a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested." 12 C.F.R. §202.7(d)(1).

II. Recoupment

As discussed above, I held that the ECOA claim alleged by counterclaim defendants in their complaint was barred by the applicable two year statute of limitations. However, in response to HUB's counterclaim -- that counterclaim defendants were in default of their obligations under the LMA -- counterclaim defendants now attempt to assert the ECOA defensively as the basis for a recoupment claim

The doctrine of recoupment permits "countervailing claims, which otherwise could not have been asserted together to be raised in a case based on any one of them." Integra Bank/Pittsburgh v. Freeman, 839 F. Supp. 326, 300 (E.D. Pa. 1993), quoting Lee v. Schweker, 739 F.2d 870, 875 (3d Cir. 1984). "A claim may be asserted by way of recoupment if the claim arises from the same contractual transaction as the plaintiff's claim and essentially functions as a defense to that claim." Id. citing Lee, 739 F.2d at 875-876. A defensive recoupment claim is not barred by the two year statute of limitations that applies to affirmative ECOA claims. See Silverman v. Eastrich Multiple Investor Fund, 51 F.3d 28, 32 (3d Cir. 1995). Therefore, counterclaim defendants argue that their ECOA claims function as a defense to all or part of HUB's breach of contract counterclaim. However, as discussed below, the release and waiver provisions in the Letter of Intent and the LMA preclude counterclaim defendants' use of HUB's alleged ECOA violations as a defense.

III. Release and Waiver

In its motion for partial summary judgment, HUB argues that even if counterclaim defendants could prove that HUB violated the ECOA, counterclaim defendants cannot assert the ECOA as a defense by way of recoupment because they released or waived their right to do so in

the Letter of Intent and the LMA. In their response, counterclaim defendants argue that the general release contained in the LMA does not preclude them from raising HUB's alleged violation of the ECOA as an affirmative defense to HUB's counterclaim because: (1) the release provisions set forth within the LMA must be construed under federal law in determining whether they waived their right to raise a claim or defense under the ECOA or the umbrella CCPA; and (2) the general release provision contained in the LMA, which makes no reference to the ECOA or CCPA, is unenforceable under federal law and Congressional public policy.

HUB argues that: (A) in this Circuit, contracts that release federal claims, including ECOA claims, are interpreted in accordance with state law, here, Pennsylvania law; (B) applying Pennsylvania law to the language of the LMA and the Letter of Intent, the general lease does apply to ECOA claims; and (C) this release is not contrary to public policy. I agree.

A. Pennsylvania Law Controls

Counterclaim defendants assert that federal case law and the consumer protection policies underlying the ECOA govern the determination of whether a borrower has released or waived its right to raise an ECOA claim. There is a circuit split with respect to the question of whether federal courts should adopt state law or apply federal law to govern the enforceability of settlement agreements, including releases of federal claims. See Gamewell Mfg. v. HVAC Supply, Inc., 715 F.2d 112, 113-114 (4th Cir. 1983). Although federal courts have "the power to apply federal common law to interpret releases" of federal claims, courts are also "free to apply a rule of state law." Three Rivers Motor Co. v. Ford Motor Co., 522 F.2d 885, 892 (3d Cir. 1975).

In determining whether to apply state law or adopt a federal rule to interpret the release of a federal claim, I must review the following factors: "the need for a common federal rule, the

extent to which the transaction in question fits within the normal course of activities regularly governed by state law, and the possibility of the state rule frustrating the operation of the federal statutory scheme." Three Rivers, 522 F.2d at 892. The Supreme Court has cautioned that "both theory and precedents of this Court teach us solicitude for state interests" and emphasized that these interests should be "overridden by the federal courts only where clear and substantial interests of the National Government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied." Id. quoting United States v. Yazell, 382 U.S. 341, 352 (1966).

The Court of Appeals has concluded that releases of federal antitrust claims should be interpreted according to state law. Three Rivers, 522 F.2d at 893. The Court reasoned that when "two private parties bargain for a release," the existence of a "diversity of state laws controlling the interpretation of releases" has little effect upon their agreement, and thus a "nationally uniform interpretation rule would have little utility." Id at 891. The Court further explained that the "application of state law to the interpretation of a contract will not come as a surprise to the contracting parties. State law customarily governs the field of contracts and it is to state rather than federal law that private parties are likely to refer when formulating the terms of a contractual release." Id.

District courts in this Circuit have applied the Three Rivers holding beyond the context of releases of federal antitrust claims and have held that releases of all federal claims should be interpreted in accordance with state law where the factors discussed in Three Rivers are satisfied. See Hanson v. Shearson/Am. Express, 890 F. Supp. 416, 427 (E.D. Pa. 1995) (citing Three Rivers and holding that state law should to be used to interpret releases of federal securities claims

because of the "strong presumption in favor of state law" where there is "no significant conflict between some federal policy or interest and the use of state law."). This "strong presumption" in favor of the use of state law extends to releases of claims for violation of the ECOA. See Stornawaye Props. v. Moses, 76 F. Supp. 2d 607, 615 (E.D. Pa. 1999) (holding that Pennsylvania law governs guaranty agreements and applying Pennsylvania law to interpret the release of ECOA defenses). Other Circuits have also acknowledged that this Circuit applies state instead of federal law to construe releases of federal claims. See Gamewell, 715 F.2d at 144 (citing Three Rivers to demonstrate this Circuit's position with respect to this "specific choice-of-law problem."). Counterclaim defendants' contention -- that federal law should govern the interpretation of the release of their ECOA claims -- does not find support in the law of this Circuit.

Counterclaim defendants attempt to distinguish Three Rivers by arguing that while applying state law to releases of federal antitrust claims would not contravene the Congressional policy behind its antitrust laws applying state contract law to releases of ECOA claims would contravene the Congressional policies underlying the ECOA. In support of this distinction, counterclaim defendants contend that the application of federal law is appropriate where the rights released are created by a federal statute "aimed at rectifying historical inequalities in bargaining power between parties", see Gamewell, 715 F.2d at 114-116, or "where the federal right at stake would be undermined by waivers obtained through ignorance or through unequal bargaining power", see Dice v. Akron, Canton & Youngstown R.R. Co., 324 U.S. 359, 361 (1952). Counterclaim defendants assert that the ECOA's purpose is to "eradicate credit discrimination waged against women, especially married women whom creditors traditionally refused to consider for individual credit." See Mays v. Buckeye Ryral Elec. Coop., Inc., 277 F.3d 873, 876 (6th Cir.

2002). Thus, they argue that federal law must apply because to apply state law to the general release in the LMA would "undoubtedly frustrate" the Congressional intent behind the ECOA.

In response, HUB argues that the public policy of protecting individual consumers who enter into contracts of adhesion with sophisticated commercial entities has no application to this case. I agree. The commercial transaction at issue here was negotiated between two sophisticated parties over a period of months throughout which both parties were represented by counsel. There is no evidence of unequal bargaining power or to suggest that counterclaim defendants were ignorant with respect to the agreement they entered into with HUB. Thus, I conclude that the application of a state rule to releases of ECOA claims arising out a comprehensive and fairly bargained-for loan restructuring contract between private parties represented by counsel does not frustrate the federal statutory scheme underlying the ECOA. Pennsylvania law will determine the scope of counterclaim defendants' release.[1]

B. Counterclaim Defendants Released and Waived their ECOA Defenses

HUB argues that it is entitled to partial summary judgment because under Pennsylvania law counterclaim defendants released and waived their ECOA claims and defenses in the LMA. I will analyze the effect of the waiver under Pennsylvania law.

Under Pennsylvania law, "the effect of a release must be determined by the ordinary meaning of its language." Buttermore v. Aliquippa Hosp., 561 A.2d 733, 735 (Pa. 1989). Parties are "free to bargain for a release of all possible claims, both known and unknown by the parties." Transp. Ins. Co. v. Spring-Del Assocs, 159 F. Supp. 2d 836, 843 (E.D. Pa. 2001), citing

[1]I also note that the parties expressly provided in the LMA that Pennsylvania would apply to the interpretation of their agreement.

Buttermore, 561 A.2d at 734. "Pennsylvania law is clearly that where the parties manifest an intent to settle all accounts, the release will be given full effect even as to unknown claims." Three Rivers, 522 F.2d at 896, citing In re Brill's Estate, 12 A.2d 50, 52 (Pa. 1940). In assessing whether such an intent exists, I will look at "the terms of a release and the facts and circumstances existing at the time of its execution." In re Brill, 12 A.2d at 52. Where a release is "comprehensive" and "without the merest suggestion of a reservation of rights," I will construe the release as "a general settlement of all accounts and liabilities" and infer and enforce the intent that even "unknown claims" are to be released. Three Rivers, 522 F.2d at 896, citing In re Brill, 12 A.2d. at 52. Furthermore, a party "cannot evade the clear language of a release by contending" that he or she "did not subjectively intend" to release a particular claim. Jordan v. SmithKline Beecham, 958 F. Supp. 1012, 1019-1020 (E.D. Pa. 1997), citing Buttermore, 561 A.2d at 735.

The release provisions in the LMA contain both general and specific language. The general portion releases HUB from "ANY AND ALL MANNER OF CLAIMS, DEMANDS, AND ACTIONS, CAUSES OF ACTION, RIGHTS OF ACTION, MANNERS OF ACTION, SUITS, DEBTS, DUES, COVENANTS, BONDS OR OTHER LIABILITIES OF ANY NATURE OR DESCRIPTION WHATSOEVER." The provision then continues with specific language, providing that the released claims "INCLUDE BUT ARE NOT LIMITED TO, ALL CLAIMS RELATING TO THE MAKING, VALIDITY, AND ENFORCEMENT OF THE . . . LOAN DOCUMENTS AND THIS AGREEMENT WHICH THE OBLIGORS . . . EVER HAD OR NOW HAVE."

The specific language applies directly to counterclaim defendants' allegation that HUB violated the ECOA and Regulation B by requiring Janet and Paige Marra to serve as guarantors to

the LMA and also by requiring Janet and Paige Marra to sign the initial guaranties. These claims are specifically encompassed by the above clause because they relate directly to the making, validity, and enforcement of the loan documents which as defined in the LMA include the original guaranties and the LMA itself.

Even if I were to conclude that counterclaim defendants' ECOA-based claims do not relate to the making, validity, and enforcement of the loan documents, it is evident from the language of the release that the parties intended a general settlement of all accounts and liabilities up to that time. The language releasing HUB from "any and all matter of claims . . . or other liabilities of any nature or description whatsoever . . . which the obligors ever had or now have" is very comprehensive and unambiguously expresses the intent of the parties to "leave nothing open and unsettled between them." See Three Rivers, 522 F.2d at 895. Because their ECOA claims had already accrued at the time of executing the release, counterclaim defendants cannot now avoid the clear and all-inclusive language of the provisions contained therein. Therefore, counterclaim defendants released and waived all of their ECOA claims and defenses against HUB when they signed HUB's September 30, 2003 Letter of Intent and again in late November when they entered into the LMA contemplated by the Letter of Intent.

Any argument that the release provision in the LMA does not encompass recoupment because it is classified as a defense rather than a claim is also without merit. After reaffirming their obligations under the original guaranties and the LMA itself, counterclaim defendants expressly agreed that those "OBLIGATIONS ARE NOT SUBJECT TO ANY DEFENSES, SETOFFS, COUNTERCLAIMS OR AFFIRMATIVE CLAIMS WHATSOEVER." This clause expressly precludes any defenses that counterclaim defendants ever had or might have against

HUB with respect to the LMA and related contracts. See Wenger v. Zeigler, 226 A.2d 653, 654 (Pa. 1967) (holding that where an instrument "expressly purports to preclude the assertion of defenses," the right to assert a defense does not survive the execution or a release). Moreover, as with the release provision discussed above, this clause is sufficiently comprehensive as to show an intent to release even unknown defenses, including ECOA-based defenses.

The facts and circumstances existing at the time of the execution of the release further supports the conclusion that the parties intended to create a general settlement of all accounts and liabilities and to foreclose the right to any defenses. Counterclaim defendants were in extensive debt at the time they countersigned the Letter of Intent and entered into the LMA. It is therefore illogical that counterclaim defendants intended to preserve (and HUB would permit them to preserve) any defenses, including ECOA defenses, that would have impeded the new comprehensive loan refinancing plan that their financial situation required from HUB and from which they benefitted. See Stornawaye, 76 F. Supp. 2d at 614. Therefore, under Pennsylvania law and based on the terms of the release and the context of its execution, I conclude that counterclaim defendants released and waived their ECOA claims, whether asserted affirmatively or defensively.

B. Not Contrary to Public Policy

Although I have already decided that Pennsylvania law controls, I will nevertheless address briefly counterclaim defendants' argument with respect to public policy. Counterclaim defendants argue that the release of a federal statutory cause of action can only be given effect if consistent with the public and private enforcement scheme of the federal statute. Because the general release in the LMA makes no mention of the ECOA or CCPA, they argue that it is

inconsistent with the enforcement scheme of the ECOA and CCPA and therefore does not preclude them from raising HUB's alleged ECOA violation as an affirmative defense. They find support for this rule from federal cases which have held that certain releases of claims for violations of the Truth in Lending Act ("TILA"),[2] another component of the CCPA, are not enforceable unless they specifically reference TILA claims.

This alleged rule is without merit because: (1) it is derived from federal common law, which, as explained above, does not govern the construction of the release in this case; and (2) the cases cited by counterclaim defendants only apply to claims under the TILA and TILA does not apply to "[a]n extension of credit primarily for a business, commercial, or agricultural purpose," 12 C.F.R. § 226.3(1). Moreover, as discussed above, the release provisions in the LMA were agreed to by business parties following comprehensive negotiations throughout which both parties were represented by counsel. Therefore, public policy provides no independent grounds for voiding counterclaim defendants' release and waiver of their ECOA claims and defenses.

HUB has also filed a second motion for partial summary judgment arguing that even if an applicant's spouse alleges, as a defense in a collection suit, that a creditor violated the ECOA by requiring her guaranty, such a defense "would not void the underlying debt obligation nor any other guaranties," Silverman v. Eastrich Multiple Investor Fund, L.P., 51 F.3d 28, 33 (3d Cir. 1995), and would not affect the liability of Pocopson Industries, Inc., B.L. Marra and Son, Inc., and Bruce and Edward Marra. HUB asserts that the liability of the loan guarantors other than

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[2]The TILA is a consumer protection statute that seeks to deter "inconsistent and undecipherable lending practices" and improve the "bargaining position of borrowers" by assuring meaningful disclosure of credit terms to consumers. See Parker v. De Kalb Chrsyler Plymouth, 673 F.2d 1178, 1180-1181 (11th Cir. 1982).

Janet and Paige Marra has nothing to do with the ECOA-based defense asserted here. See Silverman 51 F.3d at 33 (holding that even if a creditor violates the ECOA by requiring that a spouse of a loan applicant serve as a guarantor, the offending creditor is still due payment from the parties who "would have incurred personal liability on the underlying debt" absent the ECOA violation). HUB's second motion for partial summary judgment will be denied as moot.

For the reasons set forth above, HUB's first motion for partial summary judgment will be granted.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

POCOPSON INDUSTRIES, INC., et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
HUDSON UNITED BANK	:	NO. 05-6173

ORDER

AND NOW, this 26th day of July 2006, upon consideration of defendant's (counterclaim plaintiff's) motions for partial summary judgment and the parties' associated briefs, and for the reasons set forth in the accompanying memorandum, it is ORDERED that defendant's first motion for partial summary judgment is GRANTED. Defendant's second motion for partial summary judgment will be DENIED as moot.

As defendant has asked leave to supply the amount of the proposed judgment "at a later date," I will not enter judgment at this time. Defendant will supply this figure with supporting documentation within ten business days of this Order. Plaintiffs may respond within ten business thereafter.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.